



January 30, 2004

HOUSE BILL No. 1318

DIGEST OF HB 1318 (Updated January 27, 2004 10:34 pm - DI 77)

Citations Affected: IC 12-15; IC 12-26; IC 35-36.

Synopsis: Medicaid overpayments and competency restoration. Provides that certain Medicaid providers who have been overpaid do not owe the state interest. Provides that a third party who contracts with the division of mental health and addiction (division) may: (1) provide competency restoration services; and (2) initiate a regular commitment proceeding. Requires a defendant committed to the division who subsequently attains competency to be immediately returned to the court for trial unless the provider of restoration services files a petition objecting to the immediate return. Provides that a psychologist or psychiatrist appointed in a competency hearing may not be an employee or a contractor at a state institution.

Effective: July 1, 2004.

Becker, Brown C, Budak

January 15, 2004, read first time and referred to Committee on Public Health.
January 29, 2004, amended, reported — Do Pass; referred to Committee on Ways and Means pursuant to Rule 127.

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HB 1318—LS 6533/DI 14+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1318

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-15-13-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) If the office of the
3 secretary believes that an overpayment to a provider has occurred, the
4 office of the secretary may do the following:

5 (1) Notify the provider in writing that the office of the secretary
6 believes that an overpayment has occurred.

7 (2) Request in the notice that the provider repay the amount of the
8 alleged overpayment. ~~including interest from the date of~~
9 ~~overpayment.~~

10 (b) Except as provided in subsection (e), a provider who receives a
11 notice and request for repayment under subsection (a) may elect to do
12 one (1) of the following:

13 (1) Repay the amount of the overpayment not later than sixty (60)
14 days after receiving notice from the office of the secretary.
15 ~~including interest from the date of overpayment.~~

16 (2) Request a hearing and repay the amount of the alleged
17 overpayment not later than sixty (60) days after receiving notice

HB 1318—LS 6533/DI 14+



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from the office of the secretary.

(3) Request a hearing not later than sixty (60) days after receiving notice from the office of the secretary and not repay the alleged overpayment, except as provided in subsection (d).

(c) If:

(1) a provider elects to proceed under subsection (b)(2); and

(2) the office of the secretary determines after the hearing and any subsequent appeal that the provider does not owe the money that the office of the secretary believed the provider owed;

the office of the secretary shall return the amount of the alleged overpayment. ~~and interest paid and pay the provider interest on the money from the date of the provider's repayment.~~

(d) If:

(1) a provider elects to proceed under subsection (b)(3); and

(2) the office of the secretary determines after the hearing and any subsequent appeal that the provider owes the money;

the provider shall pay the amount of the overpayment. ~~including interest from the date of the overpayment.~~

(e) A hospital licensed under IC 16-21 that receives a notice and request for repayment under subsection (a) has one hundred eighty (180) days to elect one (1) of the actions under subsection (b)(1), (b)(2), or (b)(3).

(f) Interest that is due under this section shall be paid at a rate that is determined by the commissioner of the department of state revenue under IC 6-8.1-10-1(c) as follows:

(1) Interest due from a provider to the state shall be paid at the rate set by the commissioner for interest payments from the department of state revenue to a taxpayer.

(2) Interest due from the state to a provider shall be paid at the rate set by the commissioner for interest payments from the department of state revenue to a taxpayer.

~~(g)~~ (f) Proceedings under this section are subject to IC 4-21.5.

SECTION 2. IC 12-15-21-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. The rules adopted under section 2 of this chapter must include the following:

(1) Providing for prior review and approval of medical services.

(2) Specifying the method of determining the amount of reimbursement for services.

(3) Establishing limitations that are consistent with medical necessity concerning the amount, scope, and duration of the services and supplies to be provided. The rules may contain limitations on services that are more restrictive than allowed

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under a provider's scope of practice (as defined in Indiana law).
 (4) Denying payment or instructing the contractor under
 IC 12-15-30 to deny payment to a provider for services provided
 to an individual or claimed to be provided to an individual if the
 office after investigation finds any of the following:

(A) The services claimed cannot be documented by the
 provider.

(B) The claims were made for services or materials determined
 by licensed medical staff of the office as not medically
 reasonable and necessary.

(C) The amount claimed for the services has been or can be
 paid from other sources.

(D) The services claimed were provided to a person other than
 the person in whose name the claim is made.

(E) The services claimed were provided to a person who was
 not eligible for Medicaid.

(F) The claim rises out of an act or practice prohibited by law
 or by rules of the secretary.

(5) Recovering payment or instructing the contractor under
 IC 12-15-30-3 to recover payment from a provider for services
 rendered to an individual or claimed to be rendered to an
 individual if the office after investigation finds any of the
 following:

(A) The services paid for cannot be documented by the
 provider.

(B) The amount paid for such services has been or can be paid
 from other sources.

(C) The services were provided to a person other than the
 person in whose name the claim was made and paid.

(D) The services paid for were provided to a person who was
 not eligible for Medicaid.

(E) The paid claim rises out of an act or practice prohibited by
 law or by rules of the secretary.

(6) Recovering interest:

(A) at a rate that is the percentage rounded to the nearest
 whole number that equals the average investment yield on
 state money for the state's previous fiscal year, excluding
 pension fund investments, as published in the auditor of state's
 comprehensive annual financial report; and

(B) accruing from the date of overpayment **if fraud is
 determined under IC 12-15-23-6 through IC 12-15-23-10;**
 on amounts paid to a provider that are in excess of the amount

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subsequently determined to be due the provider as a result of an audit, a reimbursement cost settlement, or a judicial or an administrative proceeding.

(7) Paying interest to providers:

(A) at a rate that is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report; and

(B) accruing from the date that an overpayment is erroneously recovered by the office until the office restores the overpayment to the provider.

(8) Establishing a system with the following conditions:

(A) Audits may be conducted by the office after service has been provided and before reimbursement for the service has been made.

(B) Reimbursement for services may be denied if an audit conducted under clause (A) concludes that reimbursement should be denied.

(C) Audits may be conducted by the office after service has been provided and after reimbursement has been made.

(D) Reimbursement for services may be recovered if an audit conducted under clause (C) concludes that the money reimbursed should be recovered.

SECTION 3. IC 12-15-23-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. An agreement under section 2 of this chapter

~~(1) must include a provision for the collection of interest on the amount of the overpayment; and~~

~~(2) may include any other provisions agreed to by the administrator and the provider.~~

SECTION 4. IC 12-26-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does not apply to the commitment of an individual if the individual has previously been committed under IC 12-26-6.

(b) A proceeding for the commitment of an individual who appears to be suffering from a chronic mental illness may be begun by filing with a court having jurisdiction a written petition by any of the following:

(1) A health officer.

(2) A police officer.

(3) A friend of the individual.



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- (4) A relative of the individual.
- (5) The spouse of the individual.
- (6) A guardian of the individual.
- (7) The superintendent of a facility where the individual is present.
- (8) A prosecuting attorney in accordance with IC 35-36-2-4.
- (9) A prosecuting attorney or the attorney for a county office if civil commitment proceedings are initiated under IC 31-34-19-3 or IC 31-37-18-3.

(10) A third party that contracts with the division of mental health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4.

SECTION 5. IC 35-36-3-1, AS AMENDED BY P.L.215-2001, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of ~~his~~ a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists; or

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology. ~~or physicians;~~

At least one (1) of ~~whom~~ **the individuals appointed under this subsection** must be a psychiatrist. ~~who~~ **However, neither may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed** shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution.~~ **The division of mental health and addiction shall provide competency restoration services or**

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enter into a contract for the provision of competency restoration services by a third party in the:

- (1) location where the defendant currently resides; or
- (2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

SECTION 6. IC 35-36-3-2, AS AMENDED BY P.L.215-2001, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense, the ~~division of mental health and addiction, through the superintendent of the appropriate psychiatric institution, director or medical director of the entity:~~

- (1) from which the defendant is receiving competency restoration services; or
- (2) to which the defendant has been civilly committed under this chapter;

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant, **if necessary. Except as provided in subsection (b),** the court ~~may~~ **shall** enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

(b) A court may not enter an order for the immediate return of a defendant under subsection (a) if the director or medical director of an entity described in subsection (a) submits a petition to postpone the return of the defendant to the court. A petition must be submitted to the court at the same time the director or medical director of an entity described in subsection (a) certifies that the defendant has attained the ability to understand the proceedings and assist in the preparation of a defense. The petition must:

- (1) explain the basis for postponing the return of the

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defendant; and

(2) indicate the circumstance or circumstances under which the defendant may be returned.

A petition filed under this subsection may not postpone the return of the defendant for more than six (6) months, less any time the defendant has received competency restoration services or has been civilly committed under this chapter. Upon the expiration of time permitted for postponing the return of a defendant under this subsection, the defendant shall immediately be returned to the court.

SECTION 7. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Within ninety (90) days after:

(1) a defendant's ~~admittance to a psychiatric institution;~~ the superintendent of the psychiatric institution admission to a state institution (as defined in IC 12-7-2-184); or

(2) the initiation of competency restoration services to a defendant by a third party contractor;

the director or medical director of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the ~~division of mental health and addiction~~ state institution (as defined in IC 12-7-2-184) or the third party contractor shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the ~~division of mental health and addiction~~ state institution (as defined in IC 12-7-2-184) or third party contractor shall retain the defendant:

(1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's ~~admittance~~ admission to a state institution (as defined in IC 12-7-2-184); or

(B) initiation of competency restoration services by a third party contractor;

whichever first occurs.

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1 SECTION 8. IC 35-36-3-4, AS AMENDED BY P.L.215-2001,
2 SECTION 112, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found
4 under section 3 of this chapter to have had a substantial probability of
5 attaining the ability to understand the proceedings and assist in the
6 preparation of the defendant's defense has not attained that ability
7 within six (6) months after the date of the:

8 (1) defendant's ~~admittance to a psychiatric institution; the division~~
9 ~~of mental health and addiction~~ **admission to a state institution**
10 **(as defined in IC 12-7-2-184); or**

11 **(2) initiation of competency restoration services by a third**
12 **party contractor;**
13 **the state institution (as defined in IC 12-7-2-184) or the third party**
14 **contractor, if the division of mental health and addiction has**
15 **entered into a contract for the provision of competency restoration**
16 **services by a third party, shall institute regular commitment**
17 **proceedings under IC 12-26.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1318, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, after line 31, begin a new paragraph and insert:

"SECTION 4. IC 12-26-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does not apply to the commitment of an individual if the individual has previously been committed under IC 12-26-6.

(b) A proceeding for the commitment of an individual who appears to be suffering from a chronic mental illness may be begun by filing with a court having jurisdiction a written petition by any of the following:

- (1) A health officer.
- (2) A police officer.
- (3) A friend of the individual.
- (4) A relative of the individual.
- (5) The spouse of the individual.
- (6) A guardian of the individual.
- (7) The superintendent of a facility where the individual is present.
- (8) A prosecuting attorney in accordance with IC 35-36-2-4.
- (9) A prosecuting attorney or the attorney for a county office if civil commitment proceedings are initiated under IC 31-34-19-3 or IC 31-37-18-3.

(10) A third party that contracts with the division of mental health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4.

SECTION 5. IC 35-36-3-1, AS AMENDED BY P.L.215-2001, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of ~~his~~ a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

- (1) psychiatrists; ~~or~~
- (2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology. ~~or physicians;~~

HB 1318—LS 6533/DI 14+



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At least one (1) of ~~whom the individuals appointed under this subsection~~ must be a psychiatrist. ~~who~~ **However, neither may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed** shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution.~~ **The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:**

- (1) location where the defendant currently resides; or
- (2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

SECTION 6. IC 35-36-3-2, AS AMENDED BY P.L.215-2001, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a)** Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense, the ~~division of mental health and addiction, through the superintendent of the appropriate psychiatric institution,~~ **director or medical director of the entity:**

- (1) from which the defendant is receiving competency restoration services; or
- (2) to which the defendant has been civilly committed under this chapter;



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shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant, **if necessary. Except as provided in subsection (b),** the court ~~may~~ **shall** enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

(b) A court may not enter an order for the immediate return of a defendant under subsection (a) if the director or medical director of an entity described in subsection (a) submits a petition to postpone the return of the defendant to the court. A petition must be submitted to the court at the same time the director or medical director of an entity described in subsection (a) certifies that the defendant has attained the ability to understand the proceedings and assist in the preparation of a defense. The petition must:

- (1) explain the basis for postponing the return of the defendant; and**
- (2) indicate the circumstance or circumstances under which the defendant may be returned.**

A petition filed under this subsection may not postpone the return of the defendant for more than six (6) months, less any time the defendant has received competency restoration services or has been civilly committed under this chapter. Upon the expiration of time permitted for postponing the return of a defendant under this subsection, the defendant shall immediately be returned to the court.

SECTION 7. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Within ninety (90) days after:

- (1) a defendant's ~~admittance to a psychiatric institution; the superintendent of the psychiatric institution~~ admission to a state institution (as defined in IC 12-7-2-184); or**
- (2) the initiation of competency restoration services to a defendant by a third party contractor;**

the director or medical director of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the

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defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the ~~division of mental health and addiction~~ **state institution (as defined in IC 12-7-2-184) or the third party contractor** shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the ~~division of mental health and addiction~~ **state institution (as defined in IC 12-7-2-184) or third party contractor** shall retain the defendant:

- (1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or
- (2) for six (6) months from the date of the:

(A) defendant's ~~admittance~~ **admission to a state institution (as defined in IC 12-7-2-184); or**

(B) **initiation of competency restoration services by a third party contractor;**

whichever first occurs.

SECTION 8. IC 35-36-3-4, AS AMENDED BY P.L.215-2001, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found under section 3 of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense has not attained that ability within six (6) months after the date of the:

(1) defendant's ~~admittance to a psychiatric institution; the division of mental health and addiction~~ **admission to a state institution (as defined in IC 12-7-2-184); or**

(2) **initiation of competency restoration services by a third party contractor;**

the state institution (as defined in IC 12-7-2-184) or the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall institute regular commitment proceedings under IC 12-26."

and when so amended that said bill do pass.

(Reference is to HB 1318 as introduced.)

BROWN C, Chair

Committee Vote: yeas 12, nays 0.

HB 1318—LS 6533/DI 14+



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